

NOV 16 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAROLINA GARCIA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74230

Agency No. A79-586-279

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Carolina Garcia, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals dismissing an appeal from the immigration judge's ("IJ") order denying her application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of discretion the denial of a motion for a continuance, *Nakamoto v. Gonzales*, 363 F.3d 874, 883 n.6 (9th Cir. 2004), and review de novo claims of due process violations, *Lopez-Urenda v. Ashcroft*, 345 F.3d 788, 791 (9th Cir. 2003). We deny the petition for review.

Garcia contends the agency erred in denying two motions for a continuance. We disagree. The IJ did not abuse her discretion by denying Garcia's original motion to continue because her attorney's conflict arose months after the hearing was scheduled. *See Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988). Nor did the IJ abuse her discretion by denying Garcia's renewed motion to continue on the ground that Garcia was feeling dizzy after taking medication, because Garcia said she felt clear-headed enough to proceed. *See id.* As the IJ did not err in denying the motions to continue, Garcia cannot show her due process rights were violated. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (noting that an alien must show error to prevail on a due process challenge).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.